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March 11, 1999

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*By Hand Delivery*

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, SW  
Washington, DC 20554

RE: Petition of US West, Inc. for Forbearance from Regulation as a Dominant Carrier  
In the Seattle, Washington MSA, CC Docket No. 99-1

Dear Ms. Salas:

Attached for filing in the referenced docket, and on behalf of Qwest Communications Corporation ("Qwest"), are the original and four copies of Qwest's reply comments.

We have also forwarded a copy of the opposition to International Transcription Services.

If you have any questions, please contact me.

Respectfully submitted,

Jane Kunka  
Manager, Public Policy

Enclosures

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the matter of

Petition of US WEST, Inc.  
For Forbearance from Regulation as a  
Dominant Carrier in the Seattle,  
Washington MSA

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CC Docket No. 99-1

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**REPLY COMMENTS  
OF  
QWEST COMMUNICATIONS CORPORATION**

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Senior Vice President, Government Affairs  
and Senior Associate General Counsel  
Jane Kunka  
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March 11, 1999

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**REPLY COMMENTS  
OF  
QWEST COMMUNICATIONS CORPORATION**

Qwest Communications Corporation ("Qwest") hereby submits these Reply Comments in response to the comments filed with respect to the above-referenced Petition of US West ("Petition")<sup>1</sup>. US West seeks forbearance from regulation as a dominant carrier in the provision of high capacity special access and dedicated transport for switched access (which US West labels as "high capacity services") in the Seattle, Washington Metropolitan Statistical Area ("MSA"). The Petition seeks relief from those Part 61 tariffing rules and Part 69 access charge rules that apply to dominant providers of interstate access services.

US West seeks the same relief in this petition as it did in its August 24, 1998 petition for relief in the Phoenix market.<sup>2</sup> Because US West has failed to satisfy any portion of the three-part statutory test for forbearance set forth in Section 10 of the Telecommunications Act of 1996, 47 U.S.C. § 160, this petition should be denied.

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<sup>1</sup> Petition of US West Communications, Inc. for Forbearance, CC Docket No. 99-1, (filed December 30, 1998).

## INTRODUCTION

Qwest is a global multimedia communications company offering a full range of voice, data, video, and information services domestically and internationally. Qwest is close to completing the construction of a \$2.5 billion state-of-the art, high capacity, advanced fiber optic telecommunications network across the United States, which will operate at speeds as high as OC-192. Effective June 5, 1998, LCI International Telecom Corp., one of the nation's fastest growing long distance companies, became a wholly owned subsidiary of Qwest.

Qwest is a customer of US West's high capacity services in the Seattle area and is also a potential competitor of US West, both for local exchange services and for full service offerings of both conventional and advanced telecommunications services. It, therefore, has a strong interest in preserving its ability to obtain reasonably priced, nondiscriminatory high capacity last mile services from US West for both itself and its customers. Continued regulatory oversight of US West's high capacity services is essential.

### **I. US WEST'S MARKET ANALYSIS DOES NOT JUSTIFY FORBEARANCE**

US West claims that due to the fact that it faces some competition for high capacity offerings, it should be treated as a non-dominant carrier. However, dominant carrier regulations are required to prohibit US West from charging unjust, unreasonable and discriminatory rates. US West is requesting that the Commission ignore that fact that it has a virtual monopoly for all other services, and that with respect to high capacity services, US West remains the monopoly facilities provider for many customers and for many geographic areas within the Seattle MSA.

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<sup>2</sup> Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No 98-157.

US West's market power has not decreased. Therefore, dominant carrier regulation of its services remains necessary to protect the public interest. Indeed, in its initial comments in this docket, GST Telecom Inc. noted that US West has acknowledged that it provides 72 percent of the total facilities in the Seattle MSA for high capacity services, and that it enjoys a 65 percent end-user sale market share and a 74 percent transport market share.<sup>3</sup>

The Telecommunications Resellers Association ("TRA") has pointed out that US West is misleading claims of a 20 percent market share and focuses exclusively on the "retail" market and ignores the "wholesale" market, and that US West actually provides the facilities used to serve nearly 80 percent of the market in the Seattle MSA.<sup>4</sup>

Hence, the factual assumptions underlying US West's petition are incorrect, and an objective analysis of the state of the market leads to the conclusion that the petition must be denied.

## **II. CONTINUED REGULATION OF US WEST'S HIGH CAPACITY SERVICES IS NECESSARY TO ENSURE THAT RATES ARE JUST, REASONABLE, AND NONDISCRIMINATORY**

US West has asked the Commission to allow permissive detariffing, permitting it the ability to file tariffs on one-day's notice without cost support. In addition, US West seeks forbearance from various dominant carrier regulations, including price cap and rate of return regulation, and the requirement that it charge averaged rates throughout the Washington study area. However, high capacity services are at the initial stage of a developmental process, and the degree of regulation applicable to these services is already minimal. Removal of the remaining protections simply cannot be justified under the three-part statutory test for forbearance set forth in Section 10 of the Act, 47 U.S.C. § 160.

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<sup>3</sup> GST Telecom Inc. at 11.

<sup>4</sup> TRA at 4.

Without a tariff filing requirement, including the notice and cost support requirement, the Commission would be totally incapable of determining whether US West is charging just, reasonable and nondiscriminatory rates for its high capacity services. Furthermore, without tariffs, customers would not be able to determine what services are available, and they would be unable to determine whether they were being discriminated against.

Without tariffs, US West could offer preferential high capacity rates, unbeknownst to customers that chose US West over another competitor for local service. Qwest would be significantly disadvantaged because it would be unable to identify whether it had been denied service unreasonably or whether it was being provided service at less favorable rates, terms and conditions. Therefore, under the first division of the forbearance test, continued regulation is necessary to ensure that rates, terms and conditions are just, reasonable, and not unreasonably discriminatory.

### **III. REGULATION IS ESSENTIAL FOR THE PROTECTION OF CONSUMERS**

Under the second division of the forbearance analysis, regulation of US West's high capacity services is necessary to protect consumers. As explained above, the potential for discrimination among consumers in the absence of tariffs and other dominant carrier regulation is apparent. If forbearance were granted, US WEST could discriminate in favor of itself at the expense of its other carrier-customers and would also have the flexibility to discriminate by charging higher rates to customers who do not have competitive alternatives. US West would also have the capacity to discriminate in favor of its own interLATA affiliate if and when it qualifies for entry into the interLATA market.

The Commission would not be justified in forbearing under these conditions.

#### **IV. FORBEARANCE WOULD HARM PUBLIC INTEREST**

Under the third division of the forbearance analysis, the Commission must determine whether forbearance would be consistent with the public interest. The Commission has permitted a measure of pricing flexibility under the current price cap scheme, volume and term discounts, customer specific arrangements and growth-based discounts. In addition, the Commission is currently considering whether to expand the range of access pricing flexibility in its Access Reform proceeding, but has not yet acted on those proposals.<sup>5</sup>

AT&T noted in its comments that US West's proposal is contrary to the Commission's "market based" access reform policy.<sup>6</sup> AT&T points out that if US West is allowed to further deaverage access rates and target reductions to the limited group of large business customers having competitive alternatives, US West would have little incentive to lower access prices for the vast majority of its access customers.<sup>7</sup> This result would not be in the public interest.

US West has not demonstrated that the local market or the market for high capacity services is sufficiently competitive that the deregulation it requests would be consistent with the public interest. The Commission, therefore, should not leave consumers without any protection in the market for high capacity services.

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<sup>5</sup> See generally Access NPRM/Price Cap Third Report and Order.

<sup>6</sup> AT&T at 3.

<sup>7</sup> AT&T at 4-5.

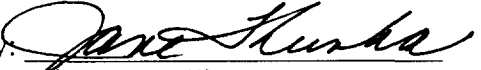


## CONCLUSION

For all of the reasons provided, US West falls short in satisfying the standards for forbearance, and the Commission should deny US West's petition.

Respectfully submitted,

QWEST COMMUNICATIONS  
CORPORATION

By: 

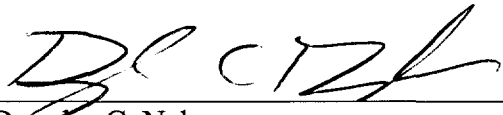
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March 11, 1999

**CERTIFICATE OF SERVICE**

I, Douglas C. Nelson, hereby certify that on this 11th day of March, 1999, copies of the Reply Comments of Qwest Communications Corporation filed in CC Docket 99-1 were provided to the parties listed below.

  
\_\_\_\_\_  
Douglas C. Nelson

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